No. 79-926

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

JOSE PADILLA,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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INDEX

	Page
INTRODUCTION	1
REASONS FOR DENYING THE WRIT OF CERTIORARI	2
THE COURT BELOW PROPERLY CONCLUDED THAT THE STATE HAD ADEQUATELY DEMONSTRATED THE EXISTENCE OF A VALID WAIVER BY THE PETITIONER	2
THE DECISION BELOW REGARDING THE LEGALITY OF THE WARRANTLESS ARREST CONFORMS TO THIS COURT'S DECISIONS MANDATING PROBABLE CAUSE	6
CONCLUSION	8

TABLE OF CASES

	Page
Adams v. *Williams*, 407 U.S. 143, 92 S.Ct. 1921 (1972)	6
Aguilar v. *Texas*, 378 U.S. 108, 84 S.Ct. 1509 (1964)	6
Beck v. *Ohio*, 379 U.S. 89, 85 S.Ct. 223 (1964)	7
Brewer v. *Williams*, 430 U.S. 387, 97 S.Ct. 1232(1977)	2
Cooper v. *Griffin*, 455 F.2d 1142 (5th Cir. 1972)	4
Fare v. *Michael C.*, ____ U.S. ____, 99 S.Ct. 2560 (1979)	2, 3
Henry v. *United States*, 361 U.S. 98, 80 S.Ct. 168 (1959)	6
McCray v. *Illinois*, 386 U.S. 300, 87 S.Ct. 1056 (1967)	6
Michigan v. *Mosley*, 432 U.S. 96, 96 S.Ct. 321(1975)	3
Miranda v. *Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966)	2, 3
North Carolina v. *Butler*, ____ U.S. ____, 99 S.Ct. 1755 (1979)	2
People v. *Baker*, 292 N.E.2d 760 (4th App. 1973)	5
Spinelli v. *United States*, 393 U.S. 410, 89 S.Ct. 584 (1969)	6
United States v. *Harris*, 403 U.S. 573, 91 S.Ct. 2075 (1971)	6
United States ex rel. Cooper v. *Warden, Illinois State Penitentiary*, 566 F.2d 28 (7th Cir. 1977)	4
United States v. *Satterfield*, 558 F.2d 655 (2nd Cir. 1977)	5
White v. *Finkbinder*, 611 F.2d 186 (7th Cir. 1979)	3
Wong Sun v. *United States*, 371 U.S. 471, 83 S.Ct. 407 (1963)	7

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INTRODUCTION

The petition for writ of certiorari raises two issues intended to justify review by this Court. The first issue poses the question of potential imposition of quantitatively prescribed intelligence scores as a criterion for the exercise of constitutional rights by claiming that a low intelligence test score precludes a knowing and voluntary waiver of fifth and sixth amendment rights. The

second issue questions the constitutional propriety of utilizing citizen informant information as a basis for probable cause for arrest. The respondent respectfully submits that neither issue constitutes a question of first impression. Furthermore, the decision below conforms to legal principles established by this Court, thus the respondent urges the denial of the instant petition.

REASONS FOR DENYING THE WRIT

THE COURT BELOW PROPERLY CONCLUDED THAT THE STATE HAD ADEQUATELY DEMONSTRATED THE EXISTENCE OF A VALID WAIVER BY THE PETITIONER.

Although the petitioner's first Question Presented relates to the absence of a "knowing and voluntary" waiver of rights, the arguments advanced in the petition speak primarily to the issue of "knowing and intelligent" waiver of rights. (Petition, p. 5) Since the record and the petition do not contain any suggestion of coercion regarding the complained of post-*Miranda* admissions, this response will be limited to the issue of a "knowing and intelligent" waiver of the right to counsel and the right prohibiting compelled self-incrimination. (Cases cited in the petition related to voluntariness of confessions predate the *Miranda* decision and thus lack direct applicability to the facts of this case.)

The *Miranda* advisements, 384 U.S. 436 (1966) exist as a prophylactic devise insuring protection of specifically delineated constitutional rights for persons in accusatorial and prosecutorial stages of criminal proceedings. Subsequent to the formulation of the requirement of these advisements, this Court has had occasion to analyze and interpret the exercise of a waiver as it relates to the admissibility of post-*Miranda* inculpatory statements. *North Carolina* v. *Butler,* ____ U.S. ____, 99 S.Ct. 1755 (1979); *Fare* v. *Michael C.,* ____ U.S. ____, 99 S.Ct. 2560 (1979; *Brewer* v. *Williams,* 430 U.S. 387, 97 S.Ct. 1232 (1977); *Michigan* v. *Mosley,* 432 U.S. 96, 96 S.Ct. 321 (1975). These cases clearly hold that a valid waiver of fifth and sixth amendment rights is possible, *Miranda* v. *Arizona,* 384 U.S. 436, 86 S.Ct. 1602 at 475; that a showing of "scrupulously honoring" an accused's right to end interrogation can be evidence of the existence of a subsequent waiver, *Mosley,* 423 U.S. at 104; that a valid waiver can be implicit, *North Carolina* v. *Butler,* 99 S.Ct. at 1757; and that a "totality of circumstances" inquiry establishing the validity of a waiver is adequate even as to juvenile proceedings, *Fare,* 99 S.Ct. at 2572.

The claim alleging invalidity of waiver in the instant case appears to rest on the characterization of the petitioner as "mentally deficient" (Petition, p. 4), thus, seemingly ignoring the "totality of circumstances" type analysis. The respondent suggests that an examination of the empirical data and case law proffered by the petitioner in support of this allegation not only ignores the mandate of "totality of circumstances" review but also fails to support the underlying premise of petitioner's incapacity to knowingly effectuate a waiver. Instead, it appears, the petitioner is requesting this Court's imposition of quantitative guidelines based on intelligence test scores to be used in the determination of one's ability to exercise and/or waive constitutional rights.

The instant petition does not allege circumstances that constitute defects in the administration of the *Miranda* advisements nor violations attendant to the petitioner's request to terminate interrogation. The sole basis for review of the claim of waiver, that of mental deficiency evidenced by intelligence and achievement test scores, has not been recognized as an exclusive factor determining validity of waiver. *White* v. *Finkbinder,* 611 F.2d 186 (7th Cir. 1979); *United States ex rel. Cooper* v. *Warden, Illinois State Penitentiary,* 566 F.2d 28 (7th Cir. 1977). Thus, this claim fails to establish error in the judgment below.

The petitioner was the subject of interrogation on two separate days, August 29 and August 30, 1971. The petitioner, however, was not in custody for this entire period, rather he returned to his home after the first day's investigation. Also, the petitioner was accompanied by a parent during the second day's investigation. Upon discovering the fact that the parent lacked bi-lingual skills, the police provided the interpretive services of a Spanish speaking officer. Each question and answer posed to the petitioner was translated for the benefit of the parent. These factors indicate compliance with due process requirements.

The respondent takes exception to the major thrust of the petitioner's argument in support of "mental deficiency." Test scores have been submitted in order to reach the conclusion that the petitioner was illiterate and that assignment to an educably mentally handicapped curriculum demonstrates proof of inability to comprehend *Miranda* advisements. However, there exist two factors regarding this empirical data which tend to vitiate such conclusions. The first is that the test scores being submitted in proof of the claim represent the evaluation of academic performance for a person in other than his primary language. A test not compensating for secondary language deficiency is guaranteed to be unreliable. The second assumption is that achievement test scores are constant and a person who scores one grade level behind his class in a third grade reading program is incapable of improving that level of performance as part of natural maturation. The respondent submits that the only valid conclusions that can be made regarding the empirical data is that the petitioner appeared to score in the low normal range of the subjects tested and that he had a reading deficiency that may be attributable to cultural bias of the testing device.

The case law used in support of petitioner's claim is readily distinguishable. *Cooper* v. *Griffin,* 455 F.2d 1142 (5th Cir. 1972) addressed the issue of the sufficiency of the response of the State regarding the claims of the petitioners, one of whom

spent the custodial period in extreme pain because of a gunshot wound. In the instant case, the State offered testimony of educational and testing specialists to contradict petitioner's claims of inability to exercise a valid waiver. The case of *United States* v. *Satterfield,* 558 F.2d 655 (1976) indicates that emotional rather than intellectual deficiency precluded a valid waiver. The *Satterfield* court concluded the defendant "was distraught, upset, weeping and obviously out of control," 558 F.2d at 657. *People* v. *Baker,* 292 N.E.2d 760 (4th App. 1973) involved a fifteen year old who was in continuous custody for over two days, and was denied repeated requests for parental contact. The decision rests specifically on the theory that the suppression hearing judge would be in the best position to evaluate petitioner's abilities, a proposition that the instant petitioner rejects. (Petition, p. 11) Therefore, these cases do not support petitioner's claim of error by the court below.

For the forementioned reasons, the respondent urges that the Appellate Court's conclusion that the State had fulfilled its obligation to demonstrate the existence of a waiver which resulted in admissibility of inculpatory statements is correct. When the totality of circumstances analysis is used in determining waiver *vel non,* the record discloses absence of coercive influences, willingness to participate in interrogation and scrupulous honoring of a subsequent request to terminate the interrogation process. These factors combine to require the conclusion of the existence of a valid waiver.

THE DECISION BELOW REGARDING THE LEGALITY OF THE WARRANTLESS ARREST CONFORMS TO THIS COURT'S DECISIONS MANDATING PROBABLE CAUSE.

The petitioner alleges that the use of uncorroborated citizen information as a basis for probable cause of the arrest in the instant case is violative of the Constitution. Consequently, the petitioner claims that inculpatory admissions and evidence uncovered subsequent to the arrest should have been suppressed.

The common law rule that warrantless arrests may be made if police officers have probable cause to believe that a suspect has committed a felony was adopted by this Court in *Henry* v. *United States,* 361 U.S. 98, 80 S.Ct. 168 1959); *McCray* v. *Illinois,* 386 U.S. 300, 87 S.Ct. 1056 (1967). Requisite probable cause is measured by satisfaction of either the two-pronged test of *Aguilar* v. *Texas,* 378 U.S. 108, 84 S.Ct. 1509 (1964) fully explained in *Spinelli* v. *United States,* 393 U.S. 410, 89 S.Ct. 584 (1969); the "substantial basis" test of *United States* v. *Harris,* 403 U.S. 573 (1971) or the "indices of reliability" test examined in *Adams* v. *Williams,* 407 U.S. 143, 92 S.Ct. 1921 (1972).

The status of the person who is the source of information holds the key to determining sufficiency of probable cause. In the instant case, the citizen informant was an acquaintance of the petitioner and provided a detailed account of the petitioner's admission of participation in the crime. These facts were corroborated by the knowledge of the nature of the crime already possessed by the officers. Thus, there is no basis for concluding insufficiency of probable cause in the instant case.

The petitioner notes that the citizen informant's trial testimony disclaimed being the source of damaging information to the police. The abstract also reveals that this witness was

called as a Court's witness (Abs., p. 58) and testified that she had not spoken with the officers about the case, (Abs., p. 59) and furthermore denied making the statement bearing her signature (Abs., p. 60). This subsequent contradiction does not invalidate the criteria that was met at the time the police received the information. For if the facts and circumstances which are within the knowledge of the officer at the time of arrest are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed the crime, there exists probable cause. *Beck* v. *Ohio,* 379 U.S. 89, 85 S.Ct. 223 (1964).

A rule emanating from *Wong Sun* v. *United States,* 288 F.2d 366 (9th Cir. 1961), *reversed in part,* 371 U.S. 471, 83 S.Ct. 407 (1963), although not mentioned in petitioner's brief, has particular applicability to the instant fact. The *Wong Sun* Court concluded that an arrest, absent probable cause, will not preclude admissibility of evidence that is so attenuated that it dissipates any taint. 371 U.S. at 491. The respondent submits that the facts of the instant case, release of the petitioner back to his home and community after the initial period of investigation and his voluntary assistance in locating the murder weapon, are facts clearly paralleling the facts leading to refusal of the Court to render inadmissible evidence against defendant Wong Sun himself. Therefore, even if a court were to view the instant petitioner's claim of illegal arrest as valid, there is an adequate factual basis to find requisite attenuation between the arrest and both inculpatory statements and location of the murder weapon.

CONCLUSION

For the above-mentioned reason, that the issues raised are subject to the previous decisions of this Court and thus do not merit review, the respondent requests that the petition for writ of certiorari to review the judgment of the Supreme Court of Illinois should be denied.

Respectfully submitted,

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